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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,937	07/24/2003	Michael Lebner	0156-2004US01	9900

7590 03/14/2007
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EXAMINER

EREZO, DARWIN P

ART UNIT	PAPER NUMBER
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3731

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/14/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/625,937	Applicant(s) LEBNER, MICHAEL	
	Examiner Darwin P. Erez	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-18 and 20-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-18 and 20-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/20/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission (IDS) filed on 12/20/06 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 3, 5, 10-12, 14, 18, 20, 22, 27-29 and 31 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2004/0204740 to Weiser.

(claims 1 and 18) Weiser discloses a two-component device for closing a laceration or incision, comprising:

a first component **1a** comprising a first adhesive-backed anchoring member [0037] and first connecting members **5a** extending from one edge thereof in a first

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direction, the one or more first connecting member each having a width that is substantially greater than their thickness;

a second component **1b** having the same structure as recited in the first component above;

adhesive **9** for attaching the one or more first connecting members to the second adhesive-backed anchoring member and adhesive **9** for attaching the one or more second connecting members to the first adhesive-backed anchoring member (Figs. 5 and 6), the attachment of the one or more first and second connecting members to the first and second adhesive-backed anchoring members form attached and bridging portions of the one or more first and second connecting members, such that the attached portions are attached to the first and second adhesive-backed anchoring members (the portion with the adhesive), and the bridging portions span over the laceration area between the first and second adhesive-backed anchoring members, wherein: the adhesive is applied to at least a portion of a lower surface of the one or more first and second connecting members; and the lower surface of the bridging portion is substantially free of the adhesive (see Figs. 5 and 6).

Weiser also discloses a method of closing a laceration, the method comprising the steps of providing the device recited above; attaching a first component to one side of the wound, attaching a second component to the opposite side of the wound, closing the wound by adjusting the position of the anchoring members, and attaching the connecting members to anchoring members (Figs. 5 and 6).

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(claims 3, 5, 20 and 22) The unattached end portions of the first and second connecting members are viewed as the pulling elements, which are fully capable of being cut and removed.

(claims 10-12, 14, 27-29 and 31) The first and second connecting members are protected by release liner **16**, which include color coding indicia for providing user distinction [0046].

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 6-8, 13, 15, 21, 23-25, 30 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiser.

Weiser discloses the release liners for the first and second connecting members having color coding to enable user distinction [0046]. Weiser fails to teach the pulling elements or the anchoring members having said color coding. However, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Weiser to have the coding in the pulling elements and the anchoring members because Weiser already discloses the general idea of providing coding to provide the user distinction and that rearranging the parts that provide the coding would only require routine skill in the art.

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Furthermore, modifying to include geometric distinction, or printed indicia instead of color coding would also only require routine skill in the art since these means for providing user distinction are obvious variants of each other.

6. Claims 9, 16, 17, 26, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weiser in view of US 6,329,564 to Lebner.

Weiser is silent with regards to the device being formed from a vapor-permeable material; and wherein the device includes reinforced portions. However, Lebner discloses a similar type of wound closure device, wherein the device comprises anchoring members (5 and 25) and a pulling members (15 and 35); wherein the device is reinforced (col. 2, line 60 – col. 3, line 4), which provides the anchor with an edge that can be viewed as a wound edge bar. Therefore, it would have been obvious to one of ordinary skill in the art at the time invention the invention was made to modify the device of Weiser to include a vapor-permeable material because it allow the wound to "breathe". It would also be obvious to add a reinforcement to device of Weiser because it would prevent the anchoring member or the connecting members (pull bar/element) from being distorted from their original shape and would help maintain the orientation of the device when tension is applied.

Conclusion


7. Applicant's submission of an information disclosure statement under 37 CFR 1.97(b) on 12/20/06 prompted the new ground(s) of rejection presented in this Office action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darwin P. Erezzo whose telephone number is (571) 272-4695. The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Darwin P. Erezzo
Examiner
Art Unit 3731

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